

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2826 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THE DISTRICT DEPUTY COLLECTOR

Versus

MAGANLAL KALIDAS PATEL

Appearance:

Mr.Y.F.Mehta, AGP for Petitioners
MS KJ BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 26/07/96

ORAL JUDGEMENT

This petition is filed by the District Deputy Collector, Valsad against the order passed by the Assistant Judge, Valsad, at Navsari on September 14, 1984 in Regular Civil Appeal No. 88 of 1983.

The respondent was served as a teacher in Primary School at Valsad managed and controlled by the District Panchayat, Valsad. It is the case of the appellant that one Savitaben Gulabhai Desai, wife of the present respondent was also serving as Primary Teacher under the District Panchayat, Valsad and in that capacity she was occupying Municipal House No.3/234 situated at Hanuman Sheri, Valsad. After her death, obviously the question of possession of that quarter arose. But it was the case of the first respondent that he was also serving as Primary Teacher under the same District Panchayat. He, therefore, made an application to allot the said quarter to him after the death of his wife. The said prayer appears to have been granted and he was occupying the said quarter and allotment order to that effect was passed on 12th January 1977.

It appears that the proceedings were initiated by the present appellant under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "the Act"), alleging that the petitioner was in unauthorised occupation of the quarter and hence he was called upon to show cause why he should not be evicted from the said quarter. At the conclusion of the proceedings, it was held that the occupation of the present respondent was unauthorised and accordingly an order was passed against him. Being aggrieved by that order, the respondent preferred an appeal before the District Judge, Valsad and the learned Assistant Judge, Valsad was pleased to allow the appeal and set aside the order passed by the Deputy Collector. It is against that order the present petition is filed.

Mr. Y.F.Mehta, learned Assistant Government Pleader submitted that the order passed by the Competent Authority under the Act was legal and valid and it could not have been interfered with by the appellate court. He submitted that the reasons recorded by the Competent Authority were proper, lawful and legal. The said order, which was in consonance with the provisions of the Act could not have been set aside by the appellate court. Looking to the order passed by the appellate court, however, it clearly appears that the order passed by the Competent Authority was not legal and valid. The Assistant Judge in para 10 of the judgment has observed that while passing the order of eviction the Deputy Collector, Valsad had observed that the occupation of the first respondent must be held to be unauthorised in view of the fact that he was an employee under the management

and control of the District Panchayat and not a Government servant. The Assistant Judge observed that apart from the fact that the said ground was not at all mentioned in the show cause notice, even on merits ground and/or reason put forward by the Deputy Collector was improper. The reason which weighed with the Assistant Judge appears to be proper inasmuch as firstly under the provisions of the Act, when notice is issued the authority must state the ground on which the occupant is *prima facie* appears to be in unauthorised occupation. Only after such assertion is made and the averment is inserted in the show cause notice that the occupant may be able to satisfy the authority as to how he was in lawful occupation and/or legal possession of the premises. When the said averment has not been made in the show cause notice obviously the first respondent was prejudiced. Even on second ground, the Assistant Judge appears to be right that after various decisions of this court and finally the decision of the Hon'ble Supreme Court in the case of State of Gujarat & another vs. Ramanlal Keshavlal Soni reported in AIR 1984 SC 831, Panchayat employees are held to be State employees. In these circumstances, it was not open to the Competent Authority to pass an order on the ground that the respondent cannot be said to be an employee of the State. But even otherwise also the eviction order could not have been passed by the Competent Authority holding the respondent in unauthorised occupation inasmuch as it is not disputed by the Competent Authority also that Smt. Savitaben was also serving under the District Panchayat. Now, if Smt. Savitaben who was serving under the Panchayat had been allotted quarter, one fails to understand as to how the respondent who was also under the District Health and serving as Primary teacher could not have been held eligible to get the said quarter. Presumably taking into account all these facts, he had been allotted quarter. I do not see any reason to interfere with the order passed by the Assistant Judge, Valsad and the petition requires to be dismissed and is dismissed with no order as to costs. It is, however, clarified that it is open to the petitioner to take appropriate proceeding if there is any other breach or any ground available in law.

Dt. 26.7.1996.

(C.K.THAKKER J.)
